MEMO SUPPORTING APPEAL BY RESIDENT CHALLENGING THE HAVEN OF BATTLE CREEK'S 26.48% RENT INCREASE

We represent Sumeya Mohamed, her mother Rukia Bile, and the other four members of their household in this appeal of a 26.48% rent increase at their apartment complex, The Haven of Battle Creek ("Haven"). To the extent other units' rent increases were based on the same rationale as that of Ms. Mohamed's, we ask that this appeal serve as a challenge to those rent increases as well.

For the reasons stated below, Marquette Management and owner G&I X Phoenix Apartments, LLC ("Marquette") are ineligible for a rent increase at Haven. For the past two years, Marquette has engaged in unsafe and illegal renovations, withheld routine maintenance in older units, charged illegal utility fees, discriminated and retaliated against its tenants, and decreased housing services while simultaneously increasing its operating expenses. Marquette's actions are a violation of the implied warranty of habitability under Minn. Stat. § 504B.161, state housing laws, state and local health and safety laws, and its rental agreement. Under St. Paul's Rent Stabilization Ordinance, not only must Marquette's violations be considered in the evaluation of its rent-increase application, but critically, Marquette's violations of the implied warranty of habitability, codified under Minnesota Statutes section 504B.161, prohibits the City of St. Paul from granting Marquette's rent-increase application. St. Paul, Minn., Legislative Code § 193A.06(a), (c). Thus, Marquette's rent increase must be denied in full.

BACKGROUND

The Haven of Battle Creek is a 216-unit apartment complex built in 1976 and located at 200 Winthrop Street South in St. Paul. Ms. Mohamed and her household have been residents of Haven since 2015.

In May 2021, G&I X Phoenix Apartments, LLC purchased Haven and installed Marquette Management as the building's property manager, with Kelly Delisle acting as the building's on-site property manager. In the two years since, Marquette , G&I X, and its on-site property manager have subjected tenants to illegal and unsafe renovations; deprived tenants of basic repair and maintenance services; charged illegal utility fees; interfered with and retaliated against tenants in their efforts to exercise their civil rights; discriminated against tenants based on their race, national origin, religion, and public-assistance status; and provided a substandard level of management services.

With the help of a local tenant advocacy organization, Ms. Mohamed and others attempted to organize and bring the above issues to the attention of Marquette. But time after time their efforts were curtailed by Marquette's on-site property manager and her staff, who sent mass-emails discouraging residents from attending tenant meetings and ordered housing advocates off the Haven property. [Mohamed ¶11] [1] As a result, Ms. Mohamed, her mother, and three other current

[1] References to statements in the Declarations of Sumeya Mohamed and Abigail Hanson are cited as "Mohamed ¶ __" and "Hanson ¶__." All Exhibits attached to this Complaint are referenced as

and former Haven tenants turned to the courts for help and filed a class action lawsuit in Ramsey County, 62-CV-23-2694. [Ex. 1] That lawsuit has since been removed to the United States District Court, District of Minnesota, 23-cv-01740 (JRT/JFD), where it remains active and is in the early stages of litigation. The complaint details the "tenant replacement" scheme that Marquette is currently engaged in to force unwanted tenants from Haven.

In February 2023, Ms. Mohamed learned that Marquette had applied for an exception to St. Paul's Rent Stabilization Ordinance. [Mohamed ¶10] The Housing Justice Center ("HJC"), on behalf of Ms. Mohamed, submitted a data practices request to the City of St. Paul, seeking information about Marquette's rent-increase application. Upon receipt of the requested information, Ms. Mohamed was shocked to learn that Marquette had requested a building-wide 25.85% rent increase. [Ex. 2 (Rent Compl. Ex. B, p. 027 ¶8); Mohamed ¶10] Ms. Mohamed felt a rent increase of this amount was unjustified given her experience with Marquette over the preceding two years and believed that the increase would surely cause financial hardship for her household, as well as other Haven households. [Mohamed ¶10]

To contest the proposed rent increase, Ms. Mohamed submitted a complaint to the Department of Safety and Inspections ("Department") on February 15, 2023. [Ex. 2] In the months following, however, the Department's consideration of Ms. Mohamed's complaint and Marquette's application was a complete "black box." Since submitting her complaint, the Department did not once reach out to Ms. Mohamed or her counsel with any status updates, questions, requests for additional evidence, or determinations concerning her complaint. [Mohamed ¶12] To make matters worse, the Department failed to inform Ms. Mohamed or her counsel about its decision to approve a higher-than-requested 26.48% rent increase, even though Ms. Mohamed has a pending rent-stabilization complaint with the Department. Ms. Mohamed only found out about the rent increase when she noticed the Department's innocuous-seeming approval postcard among the items in her mailbox on June 16, 2023—weeks after the determination had apparently been made. [Mohamed ¶13] The postcard explained that the City had approved her landlord's application for an exception to the 3% rent cap and briefly stated that:

> Per the landlord's application, the maximum allowable increase for the next 12-month period is 26.48%. Capital improvements were also conditionally approved and rent may increase after the improvements are made.

[Mohamed ¶13] The postcard identified the rent-increase determination date as May 24, 2023. Ms. Mohamed immediately reached out to her counsel and informed them of the rent-increase approval and her desire to appeal. But this deliberately "black box" approval process by the Department is

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"Ex. __." To consolidate the number of exhibits sent to the court, any exhibit attached to the Class Action Complaint, Rent Increase Complaint, or Greg Myers' Report will be designated as such. For example, an exhibit that is attached to the Class Action Complaint will be referenced as: "Class Compl. Ex. __.", an exhibit attached to the Rent Increase complaint will be "Rent Compl. Ex. __", and an exhibit attached to Greg Myers' report will be "Myers Ex. __." Any page number referenced corresponds to the three-digit page number found in the bottom right of the exhibit.

an egregious violation of Ms. Mohamed's procedural due process rights—and those of the other tenants at Haven. As the U.S. Supreme Court emphasized in its seminal decision *Goldberg v. Kelly*:

> "The fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). The hearing must be "at a meaningful time and in a meaningful manner." *Armstrong* v. *Manzo*, 380 U.S. 545, 552 (1965). In the present context these principles require that a recipient have timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally. These rights are important in cases such as those before us, where recipients have challenged proposed terminations as resting on incorrect or misleading factual premises or on misapplication of rules or policies to the facts of particular cases.

397 U.S. 254, 268 (1970). The postcard announcing approval of the rent increase was not timely and does not contain reasoning sufficient to qualify it as "adequate" notice. The absence of any rationale on the notice explaining *why* Marquette qualified for a 26.48% rent increase, coupled with the 23-day delay in receiving the notice, has severely prejudiced Ms. Mohamed in this appeal, and has unquestionably compromised the legal rights of other tenants who may not be as informed about the appeal proceedings as Ms. Mohamed or may not be represented by counsel. Moreover, even for tenants who do overcome these obstacles to file an appeal, the City's appeal procedure allows for no discovery, no opportunity for cross-examination, no procedural guidelines, and only very limited and uncertain opportunities to provide evidence.

Finally, as of the date of this submission, the Department has failed to respond to a data practices request submitted over two and a half months ago regarding Haven's certificate of occupancy history since it took over the property in 2021 and has failed to respond to data practices requests regarding Department communications about, and analysis of, the Haven rent approval, Ms. Mohamed's still-pending rent-increase complaint, and other rent-increase complaints made by Haven tenants.

Despite the hurdles presented by the Department's "black box" rent increase approval process, Ms. Mohamed timely appeals the Department's rent increase determination.

MARQUETTE IS PROHIBITED FROM OBTAINING A RENT INCREASE UNDER THE REASONABLE RETURN ON INVESTMENT EXCEPTION BECAUSE IT HAS VIOLATED THE IMPLIED WARRANTY OF HABITABILITY, MINN. STAT. § 504B.161

As a baseline matter, St. Paul's Rent Stabilization Ordinance ("Ordinance") limits rent increases to 3% annually. SPLC § 193A.04. Landlords can request an exception to the rent cap based on their right to a reasonable return on their investments ("RROI"). SPLC § 193A.06(a). However, the Ordinance is unequivocal that before any application for a rent increase can be approved, a landlord **must** comply with the implied warranty of habitability: "**The City *will not***

grant an exception **to the limitation on Rent increases for any unit where the Landlord has failed to bring the Rental Unit into compliance with the implied warranty of habitability in accordance with Minnesota Statutes section 504B.161."**[2] SPLC § 193A.06(c). In other words, before it can obtain any exception to the 3% rent increase cap, Marquette must first establish that the relevant rental unit complies with Section 504B.161. **Full** compliance with Section 504B.161 is a precondition for any departure from a 3% rent increase under the Ordinance. Marquette has completely failed to meet this precondition.

Section 504B.161 provides, in relevant part, that a residential landlord covenants:

> (1) that the premises and all common areas are fit for the use intended by the parties;
> (2) to keep the premises in reasonable repair during the term of the lease or license . . .; [and]
> (4) to maintain the premises in compliance with the applicable health and safety laws of the state, and of the local units of government . . ..

Minn. Stat. § 504B.161, subd. 1(a)(1), (2), (4). In *Fritz v. Warthen*, 213 N.W.2d 339 (Minn. 1973), the Minnesota Supreme Court recognized Section 504B.161 as creating a "statutory right" for residential tenants to rent from a landlord who guarantees that it will "maintain the premises in compliance with applicable health and safety laws." *Id.* at 342; *id.* at 340-41 ("[A]s a part of tenants' rights legislation enacted by the 1971 legislature, a landlord is now held . . . to covenant to keep leased residential premises . . . in compliance with applicable health and safety laws."). Marquette has recognized and affirmed its obligations under Section 504B.161 by including similar covenants in its lease. [Ex. 2 (Rent Compl. Ex. C, p. 043 ¶32)]

As shown below, there is overwhelming evidence that over the last two years, Marquette has continuously violated multiple provisions of Section 504B.161. Marquette's noncompliance with Section 504B.161 includes violations of: lead and asbestos health and safety laws; Minnesota common-meter utility law, *see* Minn. Stat. § 504B.215, subd. 2a(c); anti-retaliation law, *see Central Housing Assocs., LP v. Olson*, 929 N.W.2d 398, 409 (Minn. 2019); and the Ordinance itself, *see* SPLC § 193A.01. These violations have, in one way or another, impacted every unit at Haven. Thus, the City **cannot** grant Marquette an exception to the 3% rent cap. SPLC § 193A.06(c). Marquette's current application must be denied in its entirety.

MARQUETTE IS PROHIBITED FROM OBTAINING A RENT INCREASE UNDER THE REASONABLE RETURN ON INVESTMENT EXCEPTION BECAUSE IT FAILS TO MEET ESSENTIAL FACTORS

Beyond Marquette's violations of Section 504B.161, the Department's approval of a 26.48% rent increase was erroneous because it failed to properly consider all evaluation factors identified under the RROI standard. The Ordinance language requires that the City take into account nine factors when deviating from the standard 3% limitation. SPLC § 193A.06(a). In

[2] Unless otherwise designated, all bolded and italicized text indicates emphasis added.

addition to the three factors on which Marquette based its RROI application (property taxes, operating expenses, and capital improvements), other factors the City "must take into account" include:

> (6) Increases or decreases in other Housing Services provided, or occupancy rules;
>
> (7) Substantial deterioration of the Rental Unit other than as a result of normal wear and tear; [and]
>
> (8) Failure on the part of the Landlord to provide adequate Housing Services, or to comply substantially with applicable state rental housing laws, Local Housing, Health, and Safety Codes, or the Rental Agreement[.]

SPLC § 193A.06(a)(6)-(8). As set forth below, when considering all required factors—as the City must—Marquette does not qualify for a 26.48% rent increase.

A. "Failure on the part of the Landlord to provide adequate Housing Services, or to comply substantially with applicable state rental housing laws, Local Housing, Health, and Safety Codes, or the Rental Agreement"

Marquette is not eligible for a 26.48% rent increase because it has failed to comply substantially with numerous state rental housing laws, including Minn. Stat. § 504B.161, as well as local housing, health, and safety codes. As explained below, Marquette has engaged in unsafe and unlawful renovations, withheld maintenance from older apartment units, disregarded its obligations under City code, violated the Ordinance and common-meter utility law, and retaliated and discriminated against its tenants.

1. Marquette's ongoing construction has created an unsafe living environment that constitutes serious violations of Minn. Stat. § 504B.161.

As evidenced by its submissions to the Department, Marquette is, and has been, engaging in extensive renovation of Haven's common areas and individual apartment units since it took over operation of the complex in May 2021. This construction has created an unsafe living environment for Haven tenants by subjecting them to the risk of lead paint and asbestos exposure and constitutes serious violations of Marquette's covenant under Section 504B.161 to "maintain the premises in compliance with applicable health and safety laws." Subd. 1(a)(4). Moreover, the extensive nature of Marquette's renovations has meant that no tenant is unaffected by its health and safety violations.

In the last two years. Marquette's large-scale renovation activities at Haven have included, among other things, the conversion of the pool room's back wall into floor-to-ceiling windows, electrical panel replacements throughout the building, and complete interior renovations of 40 units, which involved the removal and replacement of floors, cabinets, closet doors, and appliances. [Ex. 2 (Rent Compl. Ex. D, p. 083)] And Marquette shows no signs of slowing down. It is currently engaging in full-scale renovation of multiple unit interiors, with a goal of an

additional 104 complete unit renovations by 2024. [Ex. 3 (Myers Ex. C, p. 029); *see* Mohamed ¶¶2-3]

But Marquette's past and present renovations violate critical health and safety laws designed to prevent exposure to lead-paint and asbestos hazards. Haven was constructed in 1976.[3] Because it was built prior to 1978, Haven's painted surfaces and materials are presumed to contain lead. 15 U.S.C. § 2681(17); 40 C.F.R. § 745.82. Similarly, as a pre-1981 building, certain materials in Haven, such as vinyl flooring, thermal system insulation, and surfacing material, are presumed-asbestos-containing. 29 C.F.R. § 1926.1101(b), (k)(1); Minn. R. 5207.0035. These presumptions may be rebutted, but in order to do so, property owners must conduct extensive testing throughout the building using approved methods. *See* 40 C.F.R. § 745.82(a) (lead); 24 C.F.R. § 35.86 (definition for "lead-based paint free housing"); 29 C.F.R. § 1926.1101(k)(5) (asbestos); Minn. R. 5207.0035.

Knowing the age of the building, and the health dangers associated with exposure to lead and asbestos hazards, HJC sent Marquette a letter in August 2022 that detailed the apparent illegality of Marquette's renovation work and requested reports evidencing any rebuttal testing for lead or asbestos. [Ex. 4, p. 003] **Marquette has failed to provide any documentation showing that Haven is free of either substance.** And it is unlikely that such documentation exists, as Marquette has continued to attach to its leases disclosures that state it has "no reports or records" pertaining to lead paint and that acknowledge asbestos "may have been used" in the construction or renovation of Haven. [Ex. 2 (Rent Compl. Ex. C, p. 038 ¶(b)(ii), p. 057 ¶3] Due to the absence of any negating evidence, Haven is presumed by law to have lead paint and asbestos material throughout and, as a result, Marquette and its contractors must comply with the relevant lead and asbestos health and safety laws.

Among the relevant lead and asbestos health and safety laws is the Lead-Safe Renovation, Repair, and Painting Program ("the RRP Rule"). Under the RRP Rule, property management companies and contractors who conduct renovations in pre-1978 residences must employ workers with the proper certifications, follow lead-safe work practices, and provide notice to all tenants in the affected work area. 40 C.F.R. §§ 745.81(a)(2)-(3), 745.84, 745.85, 745.89(d), 745.90(a). Importantly, the RRP Rule also requires property management companies and contractors to document compliance with these practices and retain compliance records. *Id.* § 745.86.

State and federal asbestos regulations impose similar requirements on property management companies, building owners, and contractors. Under these laws, if planned renovations involve asbestos-related work, these entities must use workers with the proper certification, follow asbestos-safe work practices, provide notice to all tenants in the affected work area, and maintain records of notification, training, and asbestos-exposure testing. *See* 29 C.F.R. § 1926.1101(k)(2), (5), (9), (n); Minn. Stat. § 326.76, Minn. R. §§ 4620.3567-3572.

Critically, these laws require documentation of compliance. Yet, despite being asked nearly one year ago, see Exhibit 4, Marquette has failed to produce this documentation and has failed to confirm that it has retained such documentation. **The failure to retain compliance**

[3] https://maps.co.ramsey.mn.us/MapRamsey/ [search "200 Winthrop Street South"]

documentation is itself a violation of the lead and asbestos health and safety laws. *See* 40 C.F.R. § 745.86; 29 § 1926.1101(n). Marquette's violation of lead and asbestos laws is a violation of its covenant "to maintain the premises in compliance with the applicable health and safety laws of the state." Minn. Stat. § 504B.161, subd. 1(a)(4). And the Ordinance makes it clear: such a violation results in a prohibition of a rent increase exception. SPLC § 193A.06(c). Accordingly, the City must refrain from granting Marquette an exception to the 3% rent cap.

Marquette's violations of Section 504B.161 extend beyond its failure to maintain compliance documentation. On behalf of Haven tenants, HJC retained an environmental consultant who has investigated common areas and sample apartments at Haven. He confirmed evidence of widespread disturbance of presumed lead-paint surfaces and suspected asbestos-containing materials, as well as the absence of required worksite safety and disposal protections, and the failure by Marquette and its primary contractor, DOCI Companies, to obtain the required licensure and certifications. **A report detailing his findings is attached as Exhibit 3.** The failures identified in the report are violations of lead and asbestos health and safety law. And, as stated above, such violations demonstrate noncompliance with Section 504B.161, subd. 1(a)(4) and mandate denial of Marquette's rent-increase application.

Beyond lead and asbestos laws, Defendants have also violated the health and safety building permit laws in the St. Paul City Code and the Minnesota Building Code by failing to secure legally required building and construction permits. City ordinance mandates that "No person shall construct, enlarge, alter, repair, move, [or] demolish . . . a building or structure without first obtaining a building permit from the building official." SPLC § 33.03(a); *see also* Minn. R. 1300.0120. Maintenance repairs or minor alterations are exempted from building permits only if the cost of such repairs or alterations falls below $500. *Id.* Moreover, plumbing, electrical, and mechanical work requires a permit. *Id.* § 33.03(b)-(d); § 34.09(4)(d), (i). Since beginning renovation on Haven in mid-2021, Defendants have performed millions of dollars of "construct[ion], enlarge[ment], alter[ation], repair, move[ment], [or] demoli[tion]" of the "building and structure[s]" at Haven, but have only secured a handful of permits that cover limited work. Thus, Defendants have engaged in sweeping violations of City permitting law.

As shown above, Marquette's renovation work—a principal basis for its request for a rent increase—violates Section 540B.161 as well as "applicable state rental housing laws, Local Housing, Health, and Safety Codes, [and] the Rental Agreement." SPLC § 193A.06(a)(8), (c). Its reckless renovations jeopardize the health and safety of Haven tenants by subjecting them to the risk of lead paint and asbestos exposure, the long-term dangers of which are well-established. The City must deny Marquette's rent increase based on this illegal renovation.

2. Marquette withholds legally required maintenance and fails to fulfill its obligations as landlord under state and local law.

At the same time Marquette endangers tenants by unlawfully renovating common areas and empty units, it allows the habitability of older units to worsen by refusing tenants needed maintenance and ignores its responsibilities as a landlord under City code.

Marquette's own financial statements show that since acquiring Haven it has shrunk the budget dedicated to "Normal Repairs" by nearly 70%, going from $295,265 in the base year to

just $88,634 in 2022. [Ex. 2 (Rent Compl. Ex. B, p. 019 ¶12] This decrease in "normal repair" investment is reflected in the experience of tenants, whose maintenance requests are frequently ignored or met with an inadequate response. Tenants—including Ms. Mohamed—have waited weeks to months for Marquette to respond to repairs ranging from broken closet doors to malfunctioning fire alarms. [Mohamed ¶¶7-8] In order to get repairs done, Ms. Mohamed has had to resort to sending a 14-day repair request letter in an attempt to force Marquette to address her maintenance needs. *See* Minn. Stat. § 504B.385 (allowing tenant to escrow rent if landlord has violated the warranty of habitability, tenant alerted landlord in writing, and 14 days have passed with no corrective action by landlord). [Mohamed ¶8]

Marquette's decision to defer regular maintenance is the main reason for the continually degrading living conditions in Haven's older units and is a violation of the implied warranty of habitability. *See* Minn. Stat. § 504B.161, subd. 1(a)(2) (landlord covenants "to keep the premises in reasonable repair during the term of the lease"). Moreover, by decreasing its maintenance and repair budget, Marquette has not only failed to provide adequate Housing Services to its tenants, SPLC § 193A.03(l), .06(a)(8), it has also allowed its rental units to substantially deteriorate beyond the expected wear and tear, SPLC § 193A.06(a)(7).

Marquette has also failed to fulfill some of its basic obligations as a landlord over the last two years. For example, Marquette has allowed infestation problems to persist throughout Haven even though St. Paul ordinance makes the landlord of a residential property "responsible for the control and/or elimination of insects, rodents or other pests wherever infestation exists." SPLC § 34.10(6). In 2019, the prior management company spent $25,924 on pest control. In 2022, Marquette decreased its spending on pest control over 25% to $18,783. [Ex. 2 (Rent Compl. Ex. F, p. 114)] This budget decrease is not reflective of decreased need; tenants have consistently reported issues with mice and have had to resort to purchasing their own roach treatments. [Mohamed ¶9] By disinvesting in pest management, and allowing the pest infestation to persist, Marquette is failing to "comply substantially" with local housing, health, and safety codes.

Marquette has also put tenants' lives in danger by allowing Haven's smoke detectors to remain in a state of disrepair. In September 2022, more than a year after Marquette took control of Haven and after the City had twice advised Marquette to service Haven's fire alarm system, City inspection staff responded to a faulty fire alarm and reported that there were "numerous smoke detectors on the 2nd, 3rd and 4th floors of the [building's east] side that have what appears to be tape holding the detectors together." [Hanson ¶4, Ex. B] Under St. Paul City Code, owners of apartment complexes must maintain smoke and carbon monoxide alarms and ensure that they are operational. SPLC §§ 34.15(3), 39. Despite its obligation, and the clear safety concerns that accompany a faulty and unreliable fire alarm system, Marquette has chosen not to upgrade its smoke alarms and instead has directed its resources to, among other things, the "premium renovation" of unoccupied units. Again, Marquette is failing to "comply substantially"—or comply at all—with its duties under local housing, health, and safety codes.

By withholding legally required maintenance and neglecting its pest-control and fire-prevention obligations, Marquette has violated the implied warranty of habitability by failing to "keep the premises in reasonable repair" and "maintain the premises in compliance with the applicable health and safety laws." *See* Minn. Stat. § 504B.161, subd. 1(a)(2), (4). As a result of

Marquette's noncompliance with Section 540B.161, the City **cannot** grant an exception to the rent cap. SPLC § 193A.06(c). Moreover, Marquette's actions also demonstrate that it has failed to "comply substantially with applicable state rental housing laws, Local Housing, Health, and Safety Codes, [and] the Rental Agreement." SPLC § 193A.06(a)(8). Its failures must be considered under the RROI standard and weigh against approval of a rent increase.

3. Marquette is not eligible for a rent increase because it has already violated the Ordinance by raising rents well above the 3% cap.

Marquette has already violated the Ordinance by raising rents far in excess of the 3% cap. Its violations act as a bar on rent increases in certain units and must be considered in the evaluation of Haven rent increases as a whole.

Per the Ordinance, "No landlord shall **demand**, charge, or accept from a tenant a rent increase within a 12-month period that is in excess of three (3) percent of the existing monthly rent for any residential rental property except as otherwise allowed under" the RROI standard or select exceptions not applicable here. SPLC § 193A.04. But over the last two years, Marquette has substantially raised rents in units that have been turned over. As shown below, Marquette is advertising "premium renovation" units with rents for a 12-month lease term that "start" at values well in excess of rents charged at the beginning of 2022.

Unit Number	Actual Rent on January 1, 2022	Advertised Rent on June 28 & July 2, 2023	Percentage Difference
207-200	$910	$1,296	42.41%
343-215	$925	$1,296	40.11%
442-215	$875	$1,402	60.23%
101-200	$1,050	$1,702	62.09%
449-215	$1,081	$1,697	56.98%
458-215	$1,027	$1,706	66.11%
317-200	$1,400	$1,981	41.50%
248-215	$1,450	$2,036	40.41%

[Hanson ¶¶2-3] These are *significant* rent increases over an 18-month period. For 13 of those 18 months, tenants living in, or applying for, Haven apartments were protected by the rent limitation provisions of the Ordinance. But the rent increases above indicate that Marquette ignored those protections. Marquette's rent increases are well beyond the 8% allowed under the self-certification process,[4] well beyond any increase allowed under the just-cause exception,[5] and

[4] On June 14, 2022, Marquette submitted a self-certification application for "multiple units" at Haven, seeking a rent-increase effective May 1, 2022. It is unclear if Marquette was granted any rent increases as a result of this application, but, if it did, such an increase would be limited to 8% under the City's declared self-certification standard.

[5] On January 2, 2023, Marquette submitted an application that sought rent increases for "multiple units" based on Just Cause Vacancy. [Ex. 2 (Rent Compl. Ex. A, p. 010)] It is unclear whether Marquette pursued increases under the just-cause standard or submitted the material necessary to

well beyond the 15% RROI maximum that was in place during 2022, *see* Rule A(8)(b) (2022). Moreover, if these increased rents are a result of Marquette's January RROI application, its demand of these rents prior to the expiration of the 45-day appeal period is a violation of the Ordinance. SPLC § 193A.03(k), .04.

Further, Marquette has not limited its rent increases to the numbers listed above. Marquette tacks on additional costs by advertising on its website that "Any lease term less than 12 months is subject to an additional short term premium." [Hanson ¶2] This short-term premium *is* rent, as it is monetary consideration that "concern[s] the use or occupancy of a rental unit pursuant to a rental agreement." SPLC § 193A.03(v). Marquette's demand of a "short term premium" added to rents already in excess of the 3% cap, is yet another violation of the Ordinance.

Marquette's demand of rents well above the 3% cap is a violation of the Ordinance, and thus, is also a violation of the implied warranty of habitability codified in Section 504B.161. The Ordinance was adopted, in part, because St. Paul's "prevailing rent levels have a detrimental effect on the **health, safety, and welfare** of a substantial number of Saint Paul residents." SPLC § 193A.01. It is an ordinance enacted to protect tenants' health and safety. As such, Marquette's violation of the Ordinance *is* a violation of local health and safety laws, a factor which must be considered under SPLC § 193A.06(a)(8), but also a factor which mandates denial of Marquette's rent increase application as a violation of the implied warranty of habitability, SPLC § 193A.06(c).

Nor are the unit-specific rent increases listed above a complete list of all rent increases we believe to be in violation of the Ordinance. For months Marquette has been demanding rents that appear to be well in excess of an annual 3% increase. However, the pricing information that could confirm that belief is unavailable to us. Prior to making any determination, we urge the City to seek review of Marquette's rent increases in turned-over units since the implementation of the Ordinance, as we believe there are additional violations.

4. Marquette fails to comply substantially with Minnesota's common-meter utility law, Minn. Stat. § 504B.215.

Marquette charges Haven tenants for gas, water, sewer, and trash and collects these amounts as part of its monthly rent. [Ex. 2 (Rent Compl. Ex. C, p. 039 ¶7, p. 049-051] However, Marquette has not complied with the stringent requirements of Minnesota's common-meter utility law, Minn. Stat. § 504B.215, and therefore Marquette is not only illegally collecting utility fees and charges, but it is also failing to "comply substantially with applicable state rental housing laws," including the implied warranty of habitability. *See* SPLC § 193A.06(a)(8), (c).

Under Minnesota's common-meter utility law, landlords who choose to bill tenants separately for utilities measured by a single meter must adhere to strict apportionment, reporting, and disclosure requirements. *See* Minn. Stat. § 504B.215, subd. 2a. The requirements provide transparency regarding the total cost of a tenancy and protect tenants from the risk of landlords overcharging them for the use of utilities that are not directly measured with respect to their units.

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justify just-cause increases, but, if it did, any increase would be limited to 8% plus consumer price index. SPLC § 193A.05(b)(1).

Among the disclosures required, a landlord "must provide prospective tenants notice of the total utility cost for the building for each month of the most recent calendar year." Minn. Stat. § 504B.215, subdivision 2a(a)(1). This right cannot be waived or modified and is to be strictly enforced. Minn. Stat. § 504B.215, subd 4(2); *see also Kutscheid v. Emerald Square Props., Inc.*, 770 N.W.2d 529 (Minn. Ct. App. 2009) (holding landlord violated common meter utility law by failing to provide notice of total utility cost for building). Here, Marquette has failed to provide to Ms. Mohamed, and other Haven tenants, notice of the total utility cost for the building for each month of the most recent calendar year at the time that they entered the lease for separate utility billing of gas, water, sewer, and trash. [Mohamed ¶6] Instead, these costs were sprung on Ms. Mohamed and other Haven tenants with no notice, significantly increasing their monthly rent and causing financial hardship. [Mohamed ¶5]

Marquette's failure to comply with basic provisions of Minn. Stat. § 504B.215, subd. 2a(a)(1), is also a violation of Minn. Stat. § 504B.161. *See* Minn. Stat. § 504B.215, subd. 2a(c) ("A failure by the landlord to comply with this subdivision is a violation of sections 504B.161, subdivision 1, clause (1) . . .."). Consequently, Marquette has failed to bring all units in which it requires tenant payment of common-meter utilities into compliance with the implied warranty of habitability and the City cannot approve a rent increase above the 3% cap for those units. SPLC § 193A.06(c).

5. Marquette retaliates against Haven tenants who exercise their rights.

Over the past two years, Marquette has consistently retaliated against Haven residents who seek to exercise their tenant rights.

For example, in June 2022, after Marquette's continued failure to perform basic maintenance, Ms. Mohamed exercised her tenant rights by sending Marquette staff a 14-day repair request letter on behalf of her household. Instead of addressing Ms. Mohamed's maintenance concerns, Marquette sent Ms. Mohamed's household a letter threatening lease termination on the basis of unidentified health and safety risks. [Mohamed ¶8] Ultimately, Marquette was unable to identify any alleged health and safety risks and retracted the termination threat. But Ms. Mohamed's experience is not unique, as other tenants who have exercised their tenant rights in some way have also been sent "health and safety risk" letters that threaten lease termination.

Marquette's retaliation against tenants for complaining about their habitability concerns is a violation of health and safety law. In *Central Housing Assocs., LP v. Olson*, the Minnesota Supreme Court recognized a common law retaliation defense for tenants whose habitability complaints prompt the retaliatory act and concluded that a landlord's retaliatory acts based on tenants' habitability complaints are "inimical to public health, safety, and welfare." 929 N.W.2d 398, 409 (Minn. 2019). Thus, Marquette's retaliatory acts against tenants, which have largely been based on tenants' efforts to raise their habitability concerns, have been violations of health and safety law. *See* Minn. Stat. § 504B.161, subd. 1(a)(4); SPLC § 193A.06(a)(8), (c). As such, Marquette's failure to "comply substantially" with anti-retaliation law must be considered not only in the context of the eight other RROI factors, but also as a violation of the implied warranty of habitability that acts as a bar to rent increase.

Moreover, it should be noted that Marquette has actively worked to *prevent* Haven residents from exercising their tenant rights. Marquette staff have ordered housing advocates who are door-knocking about tenant-rights meetings to leave Haven property and sent out mass emails to Haven residents instructing them not to attend tenant-rights meetings sponsored by housing advocates. [Mohamed ¶11] Recently, Ms. Mohamed, along with staff from HJC, attempted to door-knock at Haven with the purpose of informing tenants about the rent-increase that is the subject of this Appeal and their rights under the Ordinance. Marquette staff confronted Ms. Mohamed and the advocates and ordered the advocates to leave. [Mohamed ¶11]

6. Marquette fails to comply substantially with state and local anti-discrimination laws.

Both Minnesota law and St. Paul ordinance make it unlawful for landlords to discriminate against lessees on the basis of a protected class in the provision of housing or services related to housing. Minn. Stat. § 363A.09, subd. 1(1)-(2); SPLC § 183.06.

Ms. Mohamed and four other current and former Haven tenants have a class action pending in federal court that alleges serious violations of state and local anti-discrimination laws by Marquette related to the provision of housing and associated services. [Ex. 1 p. 024-026 ¶¶53-60, p. 032-035 ¶¶81-86] An appeal of a rent-increase determination is obviously not an adequate forum in which to fully and fairly litigate the issue of discrimination. However, the issue of whether or not Marquette violated state and local anti-discrimination laws is pertinent to the City's rent-increase determination because the City must consider a landlord's failure to "comply substantially with applicable state rental housing laws." SPLC § 193A.06(a)(8). Minnesota's anti-discrimination law specifically calls out discrimination in the *renting* of property, Minn. Stat. § 363A.09, and is thus a "state rental housing law," the noncompliance of which must be considered under the Ordinance.

The question of housing discrimination at Haven is central to the pending class action lawsuit. But the answer to the question of housing discrimination is also important to the analysis of any rent increase at Haven. For this reason, and as explained below, we ask that any decision resulting from this appeal should at minimum be stayed pending resolution of the class action lawsuit.

B. "Increases or decreases in other Housing Services provided"

When departing from the 3% limitation, the Ordinance also requires the City to consider "increases or decreases in other Housing Services provided." SPLC § 193A.06(a)(6). "Housing services" include repairs and maintenance, as well as utilities that are paid by the landlord and refuse removal. SPLC § 193A.03(l).

As noted in section A.2 Marquette's financial statements show that it has shrunk its "Normal Repairs" budget by nearly 70% since the base year. [Ex. 2 (Rent Compl. Ex. B, p. 019 ¶12] And, as noted in section A.2, tenants' experiences, including that of Ms. Mohamed, have reflected this disinvestment. [Mohamed ¶7-8] By decreasing its maintenance and repair budget, Marquette has decreased the Housing Services provided to tenants. SPLC § 193A.06(a)(6).

In addition, since taking over Haven, Marquette has required tenants to pay gas, water, sewer, and trash utilities, despite failing to provide the strict disclosure requirements of Minn. Stat. § 504B.215, subd. 2a. *See* Section A.4. The prior owner, who was in charge during the base year of 2019, did *not* charge tenants separately for gas, water, sewer, and trash utilities; instead, these utilities were included in tenants' base rent. [Mohamed ¶4] Marquette's shifting of utility costs onto tenants is yet another decrease in the Housing Services provided. SPLC § 193A.06(a)(6).

These decreases in Housing Services have degraded the livability of tenants' homes and markedly raised their monthly rent obligations. Marquette's reduction in Housing Services **must** be considered when evaluating the allowed rent increase and weighs heavily against a rent increase of 26.48%.

C. "Unreasonable increases in expenses since the Base Year."

Several of Marquette's operating costs have dramatically increased since the base year of 2019. These exorbitant expense increases cannot reasonably serve as a basis for an exception to the rent cap.

The Ordinance requires the City to consider "[u]navoidable increases or any decreases in maintenance and operating expenses" in its evaluation of a rent exception based upon RROI. SPLC § 193A.06(a)(2). However, the Rules specify that "[o]perating expenses shall not include . . . Unreasonable increases in expenses since the Base Year." Rule 5(c)(vii).

Marquette argues that it has experienced an unavoidable increase in its operating expenses. A significant portion of that hike is due to Marquette's substantial increase in what the MNOI worksheet classifies as "Manager/Management Services." In 2019, the prior owner spent $372,502 on management services. In 2022, Marquette spent $659,811, an astonishing 77% increase. [Ex. 2 (Rent Compl. Ex. B, p. 019 ¶8]

Despite this apparent investment in management services, Ms. Mohamed and other Haven tenants have seen a marked decrease in service level. As noted above, maintenance and repair requests often go unresolved for weeks to months, if they are addressed. [Mohamed ¶¶7-8] Further, after maintenance visits, Marquette staff have sent tenants—including Ms. Mohamed—letters threatening lease termination on the basis of unidentified health and safety risks. In Ms. Mohamed's case, the letter was retracted after Marquette staff were unable to identify any of the alleged health and safety risks. However, these letters function as retaliation against tenants who exercise their rights and push Marquette to address their concerns.

Marquette also makes little effort to clearly communicate significant changes to its tenants. As explained in section B, shortly after Marquette took control of Haven, it began to require all residents to pay for certain shared utilities. This was a change for which Marquette provided tenants little explanation, leaving many confused about this service change, what they were paying for, and the subsequent increase in monthly expenses. [Mohamed ¶¶4-5]

Haven residents have not received improved management services since Marquette took control, and in no way have Haven residents received management services that would justify a

77% increase in management expenses. This increase in operating expenses is unreasonable and should have been excluded from the Department's consideration of Marquette's RROI application.

D. Capital Improvements

The "cost of planned or completed capital improvements to the Rental Unit (as distinguished from ordinary repair, replacement and maintenance)" must be considered by the City during its evaluation of a landlord's RROI application. SPLC § 193A.06(a)(3). However, in an attempt to justify massive building-wide rent increases, Marquette has disregarded important Department Rules that limit the reach of capital improvements.

1. Inclusion of two years of capital improvements.

Marquette's MNOI worksheet entry for capital improvements includes improvements for both 2021 and 2022. [Ex. 2 (Rent Compl. Ex. B, p. 023; Ex. D] There is no provision in the ordinance for including in the calculation of net operating income ("NOI") the cost of capital improvements for years other than the current year (2022). Sections A(1) and (2) of the Rules make it clear that NOI is an annual calculation. A reasonable return is calculated by multiplying a base year NOI by an annual CPI. Including multiple years' expenses would make this calculation meaningless. That the regulations do not provide for such adjustments demonstrates that capital expenditures for years prior to the "current" year are not to be considered. The Department's rent-approval postcard was silent on whether it had included one or two years of capital improvements in its calculation of RROI. [Mohamed ¶13] To the extent that multiple years of capital improvements were included, the Department erred and the Haven rent increase has been substantially inflated.

2. Apportioning unit-specific capital improvements to the entire building.

A significant portion of Marquette's capital-improvement investments go to a small number of units, yet Marquette is seeking to make the whole building pay for those units' improvements. Rule 6(a) provides that any allocation of a rent increase predicated on "unit-specific capital improvements must be allocated to that unit." But Marquette has used over $200,000 worth of unit-specific capital improvements to pad its general operating expenses and support a 25.85% building-wide rent increase. [Ex. 2 (Rent Compl. Ex. B, p. 019, 023, 027; Ex. D, columns "c" & "i"] Again, the Department's rent-approval postcard is silent on this issue. [Mohamed ¶13] But, to the extent that unit-specific capital improvements were considered, any resulting rent increase would (ignoring the other violations mentioned above) be appropriate only in the units that actually received those unit-specific capital improvements. Marquette's unit-specific capital improvements certainly cannot be used to justify rent increase on units in which the improvements are not applicable.

MARQUETTE'S RENT INCREASE APPLICATION MUST BE DENIED

Marquette's rent-increase application is based on unsafe renovations, ongoing violations of health and safety measures, noncompliance with rental housing law, reduced services, and dramatic expense increases for which current residents have reaped no benefits. Yet, the Department has granted Marquette a 26.48% rent increase. Not only is this increase unaffordable and surely to cause mass displacement, but it also violates the Ordinance.

The City **cannot** grant an exception to the 3% rent cap for "any unit where the landlord has failed to bring the rental unit into compliance with the implied warranty of habitability in accordance with Minn. Stats. § 504B.161." SPLC § 193A.06(c). Since taking over Haven, Marquette has continuously engaged in violations of Section 504B.161, ranging from unsafe renovations and illegal utility fees, to decreased repairs and tenant retaliation. These violations have been widespread and have impacted all Haven residents. Therefore, the City cannot grant Marquette an exception to the rent cap and **we ask that Marquette's rent increase application be denied outright.**

Moreover, Marquette's health and safety violations, reduced services, degrading rental units, and unreasonable expense increases must be evaluated in concert with their purported increase in property taxes, operating expenses, and capital improvements. *See* SPLC § 193A.06(a). And when considered—as they must be—these factors weigh heavily against the approval of a 26.48% rent increase.

IN THE ALTERNATIVE, THE FINAL DETERMINATION SHOULD BE STAYED

If Marquette's rent increase application is not fully denied, we then ask that any final determination be stayed until adjudication of the federal lawsuit is complete. Approval of this rent increase will likely result in mass-displacement from Haven because few households, if any, will be able to afford a 26.48% increase to their rent (not to mention the possibility of *additional* increases after unnamed capital improvements are made). Thus, like an eviction proceeding, this rent increase appeal is a summary proceeding that has the foreseeable outcome of involuntarily forcing tenants out of their homes.

A closely analogous case is *Bjorklund v. Bjorklund Trucking, Inc.*, 753 N.W.2d 312 (Minn. Ct. App. 2008), *rev. denied* (Minn. Sept. 23, 2008), in which the Court of Appeals held that "when the counterclaims and defenses are necessary to a fair determination of the eviction action, it is an abuse of discretion not to grant a stay of the eviction proceedings when an alternate civil action that involves those counterclaims and defenses is pending." *Id.* at 318-19. Here, the full and fair adjudication of issues of habitability, utility charges, retaliation, and discrimination in the pending class action is "necessary to a fair determination of" this appeal, and "it would be an abuse of discretion not to grant a stay of the" rent increase proceedings. *Bjorklund*, 753 N.W.2d at 318-19. Thus, if Marquette's rent-increase application is not denied outright, this appeal should be stayed pending adjudication of the pending class action.

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